UNITED NATIONS

CAT

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Distr.
GENERAL

CAT/C/SR.203
22 November 1994

Original: ENGLISH

COMMITTEE AGAINST TORTURE

Thirteenth session

SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 203rd MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 16 November 1994, at 10 a.m.

Chairman: Mr. DIPANDA MOUELLE

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* The summary record of the second part (closed) of the meeting appears as document CAT/C/SR.203/Add.1.

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GE.94-14786 (E)

The meeting was called to order at 10.10 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 4) (continued)

Initial report of Morocco (CAT/C/24/Add.2)

1. At the invitation of the Chairman, Mr. Majdi, Mr. Chaira, Mr. Doumou, Mr. Kaddouri, Mr. Kharrati, and Mrs. Zirari (Morocco) took places at the Committee table

2. Mr. MAJDI (Morocco) said that the submission of the initial report was an indication of his Government's willingness to enter into a dialogue with the Committee, and of its interest in the Committee's activities.

3. Since the Convention formed part of Morocco's legal order, there had been no need to take any legislative measures to implement it. As a result of a decision taken to overturn a ruling made in 1986 by the Court of First Instance of Rabat, the position was that, in the event of a conflict between an international convention and domestic law, the international convention took precedence. Consequently, the Convention had formed an integral part of Moroccan law since its entry into force.

4. Since 1990, the Moroccan authorities had been engaged in a large-scale reform of domestic legislation in order to ensure that it was in conformity with Morocco's international commitments. The reforms had affected regulations governing police custody and pre-trial detention, and had involved the reintroduction of the principle of collegiality in the Court of First Instance, so that justice was henceforth administered by three judges. The reforms had also led to the repeal in 1994 of the act of 29 June 1935 concerning the suppression of demonstrations prejudicial to public order and of actions which undermined respect for the law.

5. Other reforms under way concerned the Penal Code and the reorganization of penal institutions. They had not yet been submitted to Parliament, because the Human Rights Advisory Council was still in the process of redrafting them to ensure that they complied with Morocco's international obligations and were in line with the United Nations Standard Minimum Rules for the Treatment of Prisoners.

6. Thus, the Human Rights Advisory Council was preparing a number of amendments to the Penal Code. It planned to introduce a provision setting reasonable limits for the duration of trials, and prohibiting any unjustified delays. The amendments would make the Criminal Investigation Department directly responsible to the Crown Procurator and subject to the supervision of the Advocate-General. Control of the Department would be transferred to the criminal division of the Court of Appeal, and it would be made mandatory for courts to notify the Court of Appeal of any misconduct on the part of officers of the Department. To guarantee their independence more effectively, examining magistrates would no longer have the status of officials of the

Criminal Investigation Department. The Crown Procurator would be required to inform a complainant within a period of 15 days of any decision not to pursue a case, and members of the Government Procurator's Office would be prohibited from attending interrogations conducted by the examining magistrate.

7. With respect to penal institutions, among the improvements proposed by the Human Rights Advisory Council was the introduction of a requirement that the day and time of entry and departure of prisoners be recorded in the prison register, and that persons held in pre-trial detention should be separated from convicted persons. Measures would be taken to ensure better hygiene in prisons, particularly where sanitary facilities were concerned, and to ensure, as far as possible, that every prisoner had a bed and proper bedding of his own.

8. The prisoner would be permitted to keep his own clothes, provided they were sufficiently clean, and would not be obliged to wear clothing which would humiliate or degrade him. Steps would be taken to ensure that the official prison doctor lived in or near the penal establishment, and the prison governor would be required to inform the authorities without delay of the contents of the doctor's reports. All those changes were currently in the process of adoption.

9. The Ministry of Justice had circulated a memorandum to all prison governors requiring them to respect the Standard Minimum Rules for the Treatment of Prisoners. It had also published a prisoners' guide giving details of the treatment to which prisoners were entitled. Copies of the guide were available to prisoners on request, and copies were also posted up inside prisons so that the inmates could consult them as and when they wished. In addition, training courses had been provided for prison warders on the need to respect the Standard Minimum Rules for the Treatment of Prisoners.

10. The prison administration was doing all it could to prevent any negligence or abuse of prisoners. Since 1992, the performing of a post-mortem examination on any person who had died while in custody, had been made compulsory, with a view to determining the cause of death and punishing those responsible should the death be found to have resulted from ill-treatment on the part of prison officers.

11. Despite the improvements made, the situation in the prisons was still a difficult one. Because of the increase in the prison population, it was impossible to provide enough space for every inmate. The Government was determined to solve that problem, and had recently doubled its budget for that purpose, enabling five prisons to be enlarged and two new ones constructed.

12. Two new bodies had been set up to deal with human rights problems. The first was the Human Rights Advisory Council, established in 1990 to assist the Head of State in human rights matters. It included representatives of various government ministries as well as people from all sectors of civil society. The Council had already initiated a number of legislative reforms, and, at its suggestion, the King had decreed an amnesty for 424 prisoners, including 11 prisoners of conscience, in July 1994.

13. The second body, set up in November 1993, was the Ministry of Human Rights, which was responsible for liaison with human rights groups, instituting appeals, and promoting respect for human rights. It also monitored the compliance of internal legislation with international instruments, and helped to increase public awareness of human rights. It was responsible for maintaining links with regional and international human rights bodies, both governmental and non-governmental. Non-governmental human rights organizations in Morocco had complete freedom to carry out their activities.

14. He reiterated that Morocco was determined to respect human rights and to strengthen the rule of law, although it did not seek to hide the fact that there were still obstacles to be overcome. In a recent statement in Parliament on the subject of disappeared persons, the Minister of Human Rights had stressed the need to deal with such problems without prejudice, and with courage, rigour and objectivity. Whenever mistakes were made, or human rights violated, proper investigations would be carried out and all the necessary steps taken to ensure that they did not recur.

15. The CHAIRMAN, speaking in his capacity as Country Rapporteur, congratulated the Government of Morocco on having submitted its initial report within a year of its ratification of the Convention. Both the initial report and the core document (HRI/CORE/1/Add.23) were in accordance with the Committee's guidelines concerning the form and content of reports.

16. Paragraph 11 of the core document stated that Morocco was a constitutional monarchy "based on a separation of powers". He asked what, specifically, that separation involved; how the independence of the judiciary was guaranteed; and whether the representative of Morocco could provide information on the status of judges and how they were trained, appointed, promoted and, when necessary, removed from office.

17. Paragraph 16 of the document referred to a "Special Court of Justice" which heard cases involving judges or public officials, as well as to a "Permanent Court of the Royal Armed Forces". The Committee would like to know what the jurisdiction of those courts was, who presided over them, what their relationship to the ordinary courts was and whether the Special Court of Justice was governed by the principle of preferential jurisdiction. Paragraph 30 stated that article 9 of the Constitution allowed for legal restriction on the exercise of certain public freedoms. He wished to know what kind of restriction was involved, and which freedoms, and under what circumstances the restriction could be imposed.

18. Turning to the report itself (CAT/C/24/Add.2), he noted that paragraph 1 referred to the setting up of a Human Rights Advisory Council. It would be useful to know who the members of the Council were and how they were appointed. Paragraph 17 stated that since 1974, 30 persons had committed suicide while in custody, and that judicial investigations had led to harsh penalties against the personnel responsible. That statement caused him some concern. He realized that, in 1974, the Convention had not yet been ratified, but it might be that some of the suicides had occurred after the ratification of the Convention, since no further dates were given. He therefore asked whether the persons who had committed suicide were ordinary prisoners or political prisoners; what offences they had committed; what the reasons for

their suicide were; what penalties had been imposed; what authority had carried out the investigations, and what the findings of those investigations had been; and what had happened to the personnel responsible.

19. The representative of Morocco had stated that ratified international treaties and covenants formed part of Morocco's domestic law. However, there would seem to be a problem where implementation of the Convention was concerned, since there was no definition of torture in Moroccan legislation. Paragraph 4 of the report stated that prohibition of torture derived from article 10 of the Constitution, which stated that no one should be arrested, detained or punished except under the circumstances and procedures provided for by law. Although excellent in itself, he did not see how that provision could prevent torture without defining it. The absence of such a definition seemed to contravene the principle of nulla poena sine lege. If the Convention was to be implemented properly, a definition of the offence, as well as the penalties for it, needed to be incorporated into domestic law, so that the offence could be punished and the victims compensated. Without a definition of torture, it was difficult to see how any statistics on it could be compiled.

20. Figures for a wide variety of offences were given in paragraph 15 of the report and details of the penalties imposed were given in paragraph 24, but torture was nowhere mentioned. Nor was anything said about what had been done to implement article 2, paragraph 2, of the Convention, which provided that no exceptional circumstances might be invoked as justification of torture, or article 2, paragraph 3, which provided that no order from a superior officer or public authority could be so invoked.

21. Paragraph 29 of the report stated that an alien who did not qualify for a residence permit could be returned or expelled, and paragraph 30 listed a number of procedures whereby the alien concerned could appeal against such a decision. However, article 3 of the Convention specifically prohibited a State party from expelling or returning a person to a State where there were substantial grounds for believing he would be in danger of being subjected to torture. He would like to know to what extent that prohibition was taken into account by the authorities when such decisions were being taken.

22. The Committee had been concerned to learn of cases in which persons who qualified as asylum-seekers or refugees had been expelled. It would like the representative of Morocco to give details of the countries of origin of those persons and of the countries to which had they been expelled and to explain how it was ensured that they did not run the risk of being subjected to torture in the latter countries.

23. In connection with article 5, the report did not give enough information on what had been done to give effect to the principle of universal jurisdiction, whereby persons who had perpetrated torture abroad must either be prosecuted or extradited to the country where the offence had been committed. He would welcome the comments of the representative on that point.

24. The report did not make clear what specific provision there was in the Penal Code for the implementation of article 7. He wished to know, therefore, how proceedings were instituted, who received the complaints, and whether the

arrested person could be extradited if he faced the death penalty or torture on his return.

25. In connection with article 9, paragraph 2, he would be interested to learn how mutual judicial assistance with other State parties was provided for, and whether assistance could be received from or given to countries with which Morocco had not signed bilateral conventions.

26. In connection with article 11, he asked the representative of Morocco to give details of the rules governing the interrogation of suspects. In particular, he wished to know whether an arrested person could be held incommunicado and, if so, for how long; whether the period of detention was the same for ordinary offences as for offences against the security of the State; and what authority was empowered to order detention in cases where State security was involved. Details of the rules governing detention in Moroccan legislation would also be useful.

27. The Committee would like to have some information concerning the Al Ank detention centre in Casablanca and the Aïn Atik detention centre in Rabat and, in particular, concerning their status, i.e. whether they were social institutions, psychiatric hospitals, or penitentiaries.

28. The report did not give any clear indication of how the requirements of articles 12 and 13 of the Convention were met. He inquired, therefore, whether the Government had taken steps to ensure that the competent authorities carried out an impartial inquiry every time there was reason to think that torture or ill-treatment had been committed and, if so whether the representative of Morocco could supply statistics concerning the number of complaints, the number of persons prosecuted, and the number convicted.

29. He asked how many prisons and prisoners there were in Morocco and whether women were held separately from men and minors separately from adults.

30. He stressed that the victims of torture should be entitled to bring criminal charges against their torturers, of which no mention was made in paragraph 73. He wondered, in fact, how a civil action could succeed in the absence of a finding of criminal wrongdoing. He would also like to know whether, in cases in which an official had been found responsible for an act of torture, the State would pay if compensation was awarded.

31. He also sought further information on Morocco's policy with regard to the rehabilitation of torture victims.

32. Notwithstanding paragraphs 74 to 78 of the initial report, it was not clear to him whether article 15 of the Convention was applied in Morocco's domestic legislation, and he consequently asked the representative of Morocco to comment on that point.

33. Mr. SORENSEN (Country Rapporteur, having thanked the representative of Morocco for his valuable introductory statement said it was clear from the report that definite progress had been made in improving the human rights situation in Morocco: in 1992 a Human Rights Advisory Council and a Ministry of Human Rights had been created, in 1993 Morocco had ratified the Convention

against Torture and, in 1994, it had released a large number of political prisoners.

34. As the Convention against Torture had not come into force until July 1993, his questions would concern only the period thereafter but, first of all, he would like to know that exact date on which the Convention had been published in the Official Gazette, because that was the moment on which it had come into force. Moreover, with reference to paragraph 3 of the report, he asked whether the preamble to the 1992 Constitution was legally binding.

35. Under article 2, paragraph 3, of the Convention, an order from a superior officer or a public authority could not be invoked as a justification of torture, and he wondered whether rank-and-file soldiers or policemen had been made aware of that provision and whether instructions had been issued that an order to commit torture must not to be obeyed.

36. Noting that it had been Morocco's policy to incorporate human rights into the teaching and training of officials in the executive and judicial branches in order to increase awareness of the need for respect for human rights (para. 54), he inquired whether any changes had been made in such teaching since the entry into force of the Convention. In that connection, he reminded the representative of Morocco that, under the Convention, doctors must also be made aware of such issues, because they, too, were often involved in acts of torture. Morocco might wish to avail itself of the United Nations technical assistance programmes and the help of non-governmental organizations in enlightening medical personnel on that subject.

37. Incommunicado detention was a time in which the danger of acts of torture being committed was greatest; the longer the period, the greater the danger. He therefore asked what had been done to ensure respect for the four paramount rights of a detainee: to speak to a lawyer, to be seen by a doctor, to notify his or her next of kin and to be informed of his or her rights, both orally and in writing. Paragraph 56 suggested that a person could be held incommunicado for as long as six days. It would be useful if the representative of Morocco could outline the procedure for such detention. He would also like to know whether there were any provisions for prolonging incommunicado detention during periods of martial law. The Committee had just received a number of reports concerning persons who had allegedly been held incommunicado for more than six days.

38. He sought further clarification concerning the medical examinations referred to in paragraph 59. He pointed out in that regard that, for proper examination, it was essential to hear the detainee's complaints, to allow the doctor to produce findings and to ascertain whether the findings were consistent with the complaints.

39. As a number of changes were currently being made to the prison system, it would be unfair to ask questions concerning it, but he looked forward to reading a full account of the prison system in Morocco's next periodic report.

40. Turning to paragraph 73, he asked whether provision had been made for the State to pay compensation to victims of torture, who must be able to obtain not only redress and compensation, but also medical rehabilitation.

41. The Committee against Torture had received a vast quantity of material from a number of sources, including the Special Rapporteur on the question of torture, the Organisation Marocaine des Droits de l'Homme and Amnesty International, about alleged cases of torture, disappearances, deaths in prison, incommunicado detention and secret prisons.

42. According to Amnesty International and the Organisation Marocaine des Droits de l'Homme, Bouchta Siman and Younes Zerzouri had died while in detention in August 1994. It was also reported by Amnesty International that Stephane Ait Idir and Redouane Hammadi, arrested on 27 August 1994, had been tortured during interrogation by electric shocks to sensitive parts of the body while being suspended by the hands and feet, a method all too familiar to the Committee. It was to be hoped that those cases would be carefully investigated and that the persons responsible brought to justice. That would send a signal from the highest Moroccan authorities that torture would not be tolerated.

43. Mr. EL IBRASHI having commended Morocco on the practical steps it had taken to ensure protection for human rights, began by asking how the Convention against Torture was incorporated into Morocco's domestic legislation, whether the Convention could be directly invoked in court and what would happen if an article of the Convention was found to be at variance with a provision of domestic law.

44. With regard to the fact-finding committees in the Chamber of Representatives referred to in paragraph 5 of the report, he inquired how many such committees had been established and how they operated.

45. Concerning the independence of the judiciary, he asked whether the Minister of Justice could appoint a judge for a fixed period, whether he could suspend a judge accused of a grave error and whether the work of the Human Rights Advisory Council involved it with the judiciary.

46. He had received information from a non-governmental organization according to which the Moroccan Minister of Human Rights had stated that 34 persons had died in detention in Tazmamert. He would like to know whether that was true and, if so, what the causes of their deaths were.

47. Moroccan legislation did not contain a definition of torture and, according to the information available to the Committee, provided for sanctions of officials only if they caused bodily harm or used force: that was inconsistent with the definition of torture in the Convention. He wondered what legislative and judicial measures had been taken to prevent torture.

48. In respect of the length of custody, the Committee had received information from a non-governmental organization alleging that such custody could last for 96 hours in cases involving violations of State security and that, under the code of military justice, a person accused of violating domestic security could be detained for 10 days, renewable as long as deemed necessary. He asked the representative of Morocco to comment on that information.

49. Having inquired about prison legislation, the rights of prisoners and the punishments that could be imposed in prisons he requested the representative of Morocco to provide information on the circumstances in which a judge could open an investigation into allegations of torture and whether Morocco could cite any examples of cases in which officials had been prosecuted for acts of torture. In that connection, it was to be hoped that he could shed some light on the specific cases reported by Amnesty International.

50. Mr. BEN AMMAR said that he, too, welcomed Morocco's advances in recent years on human rights issues in general, and especially its accession to the Convention, its waiving of reservations relating to article 20 and its declarations under articles 21 and 22. In that connection, he noted in particular the establishment of a Ministry of Human Rights; he would appreciate further information about its mandate and functioning.

51. He would also like to know more about the legislation, including any further measures envisaged, to govern the conditions of persons held in police custody or pre-trial detention. In particular, he wished to know what legislation or other juridical measures had been adopted since Morocco's accession to the Convention; he recalled, in that regard, that article 2 of the Convention required each State party to take effective legislative, administrative, judicial or other measures to prevent acts of torture.

52. He asked whether there was a list of detention centres and, if so, whether it was made public, and what administrative or judicial authority controlled them. In that connection, he noted with some concern that two secret detention centres were alleged to exist.

53. With regard to the portion of the report relating to article 11 of the Convention (paras. 56-65), he would like to know how the conditions of detainees, and the exercise of their rights, such as contact with relatives and access to a lawyer, were systematically monitored and what safeguards applied at the beginning and end of police custody.

54. He also requested comments on the reports by Amnesty International, following a visit to Morocco in December 1993, that prisoners of conscience had been detained in secret; that, of some 500 prisoners reported to that organization, 150 were prisoners of conscience; and that 15 persons recently arrested had been held for over 4 months. In addition, he asked for details concerning the alleged disappearance, following release from custody, of a group of persons from Western Sahara. He also inquired whether members of the Human Rights Advisory Council could visit places of detention.

55. On the subject of the conditions of detention, it seemed that the law did not prevent the imposition on detainees of punishments such as deprivation of food, other than bread, for three days, prolonged spells in darkness behind closed doors and windows, the use of chains and corporal punishment, and other forms of harassment and ill-treatment if they sought legitimate redress. Allegations along those lines stemmed, inter alia, from reports by Moroccan human rights activists, which provided, as it were a counterbalance to official reports.

56. He would like to have further information about the Supreme Council of Justice; in particular, he wished to know how frequently it met, since he had heard that the body had been inoperative for some two years and that judges had been appointed without its advice having been sought. He would also like to know more about the powers of examining magistrates and the role of the Crown Prosecutor's Office, particularly as they affected the submission and acceptance of case material for prosecution.

57. Furthermore, he would like to know what procedures existed to compensate victims of torture, and would appreciate statistical information, with regard to the police, of the sort provided in respect of the Gendarmerie Royale. He noted that, under article 9 of the Moroccan Constitution, it was possible to restrict certain public freedoms by law and he would like to have more information on that subject also.

58. Mr. GIL LAVEDRA, having associated himself with the questions asked by the country rapporteurs, said he would like to have further information about the categories of penalties covered in the Penal Code and about the crimes punishable by the death penalty. In addition, he would welcome further information on the respective roles and competence of the Gendarmerie Royale and the police, as well as on the structure of the former.

59. He was surprised to see, in paragraph 15 of the report, that of 319 offences committed by gendarmes only six related to ill-treatment and 12 to assault and battery; he wondered whether some cases of ill-treatment were not being reported. On the subject of police custody, he was puzzled to note, in paragraph 56, that the limit of 48 hours imposed on police custody could be extended by 24 hours if there was serious and corroborating evidence against the suspect; if such evidence was available, surely the suspect should be charged forthwith. He would like to have the comments of the Moroccan representative in that regard, as well as information about what subsequently happened to the suspect.

60. He endorsed the questions asked in connection with paragraphs 28 and 29 of the report, which seemed to indicate that the provisions of article 3 of the Convention were not fully respected. He was not entirely satisfied with the information given in paragraphs 40-52, in connection with articles 5-7 of the Convention, which covered the application of Moroccan law to crimes of torture committed abroad. Paragraphs 74-78 of the report, on the value in Moroccan courts of statements obtained under torture, were not entirely clear to him either, since, according to article 15, such statements should not be invoked. In that regard, he asked whether the police could take statements from prisoners and whether such statements were deemed valid.

61. Mrs. ILIOPOULOS-STRANGAS expressed her appreciation of the completeness of Morocco's initial report, which testified to the country's willingness to implement the Convention's provisions.

62. Referring to paragraphs 7 and 66, she asked whether a detainee had any choice of physician for the medical examinations mentioned therein. With regard to the recently established Ministry of Human Rights, she would like to know how it received and handled complaints, and whether it had an official similar to the ombudsman of some European countries.

63. While appreciating Morocco's internal security problems, she was concerned about the number of cases of ill-treatment reported by non-governmental organizations. She would appreciate some information on the subject from the Moroccan authorities, therefore, at least with regard to cases reported since Morocco's ratification of the Convention. Lastly, she wondered whether the Moroccan Government felt able to make the declaration envisaged under article 22.

64. Mr. REGMI associated himself with the questions asked by the previous speaker and would also like to have further information about the country's judicial system. He asked what authority was competent to appoint judges to the Supreme Court, and whether that court was empowered to annul decrees on grounds of incompatibility with the Constitution; and he would like to know what constitutional safeguards existed in favour of detainees. He also asked whether it was true that secret detention centres existed, as reported by Amnesty International.

65. Mr. BURNS said he welcomed the new activities of the Moroccan Government in the field of human rights protection, which had started some three years previously and which appeared to reveal a serious concern that a regime to protect human rights should be put in place. However, it seemed from the report that no radical legal reforms had been introduced except for the constitutional amendment of 1992 and the creation of the Human Rights Advisory Council. The real reform therefore appeared to be the political will manifested in the activities of the State itself.

66. Morocco was also to be commended on having ratified other human rights conventions and for being one of only two States that had ratified the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families.

67. In connection with article 2 of the Convention and noting that Moroccan legislation contained no real definition of torture, he asked whether there was a defence of superior orders in Morocco, and if so, in what circumstances, and whether there was a defence of public necessity in Morocco.

68. With regard to the rights of victims, it was not clear to him whether or not Morocco acknowledged State responsibility for the conduct of its agents. He asked, therefore whether an individual who alleged that he or she was a victim of torture could join the State in an action for damages and the cost of rehabilitation.

69. Mr. YAKOVLEV expressed his deep satisfaction with the report. It was particularly heartening to observe that Morocco was making serious efforts to establish a real constitutional monarchy. Since human rights were best protected through criminal procedure and the system of criminal justice, he

looked forward to the delegation's replies to the questions raised in that connection.

70. With regard to paragraph 56 of the report, he noted that periods of police custody could be doubled in cases of offences against State security, and he wondered in precisely what circumstances the doubling of a period of custody would apply.

The first part of the meeting (public) rose at 12.15 p.m.